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BEFORE THE SURFACE TRANSPORTATION BOARD

Yakima Interurban Lines Association,) AB 600 (Sub No. 1x)
-- Abandonment Exemption – in)
-- Yakima County, WA)

RESPONSE TO MOTION TO CORRECT

Kershaw Sunnyside Ranches, Inc. (Kershaw Sunnyside Ranches) responds to Yakima County, the City of Yakima, Town of Naches and Yakima Interurban Lines Association's (YILA) (collective referred to as "County") Motion to Correct Decision, served July 17, 2007 ("Motion to Correct") as follows:

I. FACTS

A. The County incorrectly states that a trail use agreement has been reached.

Yakima County misrepresents that a trail use agreement exists. Yakima County in its Motion to Correct states, "no further NITU or CITU extensions of negotiation period were necessary – because a railbanking/trails use agreement had been reached and indeed property transferred pursuant to same." (Motion to Correct, 9). No trails use agreement exists between the County, YILA or any other entity. Accordingly, no copy of a trail use agreement exists in the record.

No plan for a trail or money for a trail exists. (See Supplemental Declaration of Rob Conrad, AB 600 219569, exhibit 2, p.77:8-20). Instead, the County seeks to hold the area of the rail line in an intermediate status of not abandoned and not moving toward a trail while they ponder what they will do.¹ The County's same lawyer indicated approximately three and a half years ago that the County and YILA were "formulating a plan to preserve

¹ The County states in its Motion to Correct, "the County and Washington State Department of Transportation (WSDOT) will now determine whether the rail line can be rehabilitated within a budget that the Department can support" (Motion to Correct Decision, 12-13)

the corridor and hopefully to complete rehabilitation for restoration of active rail service.” (Notice of Exemption, filed Dec. 20, 2005, n.1) (citing Joint Protest filed by County, AB 600, filed March 12, 2004 p. 4-5).

The June 26, 2007, letter the County filed with the Board formally notified the Board that YILA had transferred the Naches Branch line at issue in the case to the County. (AB 600 Sub 1x, 219657). The same letter stated that “Yakima County and YILA understand that the Notice of Interim Trail Use (NITU) applicable to the Naches Branch line in this proceeding now automatically extends indefinitely.” (AB 600 Sub 1x, 219657).

II. ARGUMENT

A. Footnote number 2 in the Board’s Decision, dated July 6, 2007, is correct.

The court should deny the county’s fourteen page motion to correct the secretary’s accurate, two sentence footnote. 49 C.F.R. § 1152.29(d)(1) establishes an NITU period of 180 days to permit a rail carrier to “discontinue service . . . and [allow the railroad to] salvage track and materials, consistent with interim trail use and railbanking. . . .” 49 C.F.R. § 1152.29(c)(2) requires that a railroad that has received “authority from the Board to abandon a line (in a regulated abandonment proceeding under 49 U.S.C. 10903, or by individual or class exemption issued under 49 U.S.C. 10502) [to] file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandon the line (e.g., this continued operations, salvage the track, cancel tariffs and intends that the property be removed from the interstate rail network).” If, after one year from the date of service of a decision permitting abandonment, “consummation has not been affected by the railroad’s filing of a Notice of Consummation, . . . the authority to abandon will automatically expire.” *Id.*

49 C.F.R. 1152.29(d)(1) permits a railroad to negotiate an interim trail use/railbanking agreement during the NITU period.” See also Office of Public Services, Surface Transportation Board, Overview: Abandonments & Alternatives to Abandonments, 30 (April, 1997). The Board requires a trail use agreement in cases in which a railroad negotiates an abandonment and trail. See Overview: Abandonments & Alternatives to Abandonments, supra. “If the Board determines that the trail sponsor is not meeting the

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statutory requirements [of the Rails to Trail Act], the interim trail use authority may be revoked and the right-of-way may be declared fully abandoned, at which point the right-of-way would no longer be part of the National Transportation System and the property would revert to any landowners with underlying rights to it." General Accounting Office Report to the Honorable Sam Brownback, U.S. Senate, Surface Transportation Issues Related To Preserving An Active Rail Lines As Trails, 9 (October 1999).

Footnote 2 in the Surface Transportation Board's July 6, 2007, decision is accurate.² It correctly recognizes that the NITU as an interim step prior to a trail use agreement. The county's meandering fourteen page argument fails to cite any authority to show that the footnote was incorrect in any way.

Dated this 8th day of August, 2007.

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² The County's Motion to Correct shows more undeserved arrogance and hyperbole than reason. The County attacks the Court of Appeals for the Federal Circuit by saying that it "ignored" Board decisions. (Motion to Correct, 11, n.2). It then attacks Justice Department lawyers by stating that the Board's decisions "may never have been understood by the Justice Department lawyers presenting takings cases there anyway" (Motion to Correct, 11, n.2).

CERTIFICATE OF SERVICE

By my signature below, I certify service on August 9, 2007, by U.S. Mail, postage pre-paid first class, a copy of the foregoing upon the following counsel of record:

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